

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-10/09-524
)
 Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Office of Vermont Health Access (OVHA) requiring petitioner to enroll in the Vermont Health Access Plan-Employer Sponsored Insurance Premium Assistance (VHAP-ESIA) program. The issue is whether the employer sponsored insurance plans meets the comparability requirement of the VHAP-ESIA program.

The facts are not in dispute. The decision is based on the documentary evidence and written argument by the parties.

FINDINGS OF FACT

1. The petitioner resides with his spouse and two minor children.
2. On or about September 9, 2009, petitioner's spouse submitted a review application to the Health Access Eligibility Unit of the Department for Children and Families regarding their eligibility for VHAP benefits.
3. Petitioner was hired as an apprentice electrician starting on September 3, 2009 by the Vermont office of

Control Technologies. As part of the review application, petitioner sent a copy of a September 3, 2009 letter he received from his employer. In that letter, Control Technologies confirmed that petitioner would be paid \$15.00 per hour and that petitioner had waived the company's health insurance as reflected by his pay being \$1.00 higher per hour than insured employees.

4. Control Technologies pays its employees who elect employer sponsored health insurance \$1.00 less per hour than employees who do not elect employer sponsored health insurance. In petitioner's case, the pay differential is \$40.00 per week or \$172.00 per month in gross wages.

5. On or about September 18, 2009, OVHA sent petitioner written notice that he was recently found eligible to purchase health insurance through his employer and that they were requesting Plan Information.

6. Petitioner provided Plan Information from his employer regarding the plan through Blue Cross Blue Shield-VFP. OVHA found the employer sponsored plan met the comparability requirements.

7. OVHA sent petitioner a Notice of Decision dated September 29, 2009 that he and his spouse were approved for VHAP-ESIA and that petitioner's share of the premium would be

\$66.00 per month. Petitioner was given a deadline of October 9, 2009 to return the Employer Enrollment Authorization.

8. Petitioner requested a fair hearing on or about October 1, 2009. Petitioner receives continuing VHAP benefits pending decision.

ORDER

OVHA's decision is affirmed.

REASONS

The Vermont Health Access Plan (VHAP) was created to provide health care coverage "for uninsured or underinsured low income Vermonsters." 33 V.S.A. § 1973(b). When the Legislature adopted VHAP, a key concern was preventing employers from ending their health insurance programs and dumping their employees into the state program. As a result, the Legislature defined "uninsured" in a way to prevent this from happening through provisions excluding eligibility for those with employer health sponsored plans within twelve months of applications in most cases. 33 V.S.A. § 1973(e)(2)(3); W.A.M. § 5312.

The Legislature next enacted 33 V.S.A. § 1974(a) which mandates individuals who are eligible for VHAP and who have access to "approved" employer sponsored insurance to enroll

in the VHAP-ESIA program. See W.A.M. §§ 5900 and 5911. The pertinent sections at 33 V.S.A. § 1974(b) state:

(1) For individuals . . . who have access to an approved employer-sponsored insurance plan, the premium assistance program shall provide:

(A) A subsidy of premiums or cost-sharing amounts based on the household income of the eligible individual to ensure that the individual is obligated to make out-of-pocket expenditures for premiums and cost-sharing amounts which are substantially equivalent to or less than the premium and cost-sharing obligations on an annual basis under the Vermont health access plan.

. . .

(2) . . .the agency shall develop criteria for approving employer-sponsored health insurance plans to ensure that the plans provide comprehensive and affordable health insurance when combined with the assistance under this section. At a minimum, an approved employer-sponsored plan shall conform to the following standards:

(A) The benefits covered by the plan must be substantially similar to the benefits covered under the certificates of coverage offered by the typical benefit plans issued by the four health insurers with the greatest number of covered lives in the small group and association market in this state.

(B) The plan shall include appropriate coverage of chronic conditions. . .

(3) The agency shall determine whether it is cost-effective to the state to enroll an individual in an approved employer-sponsored insurance plan with the premium assistance under this subsection as compared to enrolling the individual in the Vermont health access plan. If the agency determines that it is cost-effective, the individual shall be required to enroll in the employer-sponsored plan as a condition of continued assistance. . .

(5) Decisions regarding plan approval and cost-effectiveness are matters fully within the agency's

discretion. On appeal pursuant to section 3091 of Title 3, the human services board may overturn the agency's decision only if it is arbitrary or unreasonable.

The VHAP-ESIA program provides premium assistance and wrap-around benefits for recipients. VHAP is provided until the recipient is able to enroll in the employer's health insurance plan. The premium assistance is set up so that the individual receives payment of the premium assistance at the beginning of the month the premium is due.

Petitioner's argues that the employer-sponsored plan is not comparable because his pay will be decreased \$1.00 per hour.

The problem with petitioner's argument is that the Legislature looked at comparability in terms of the benefits covered by the employer-sponsored insurance plan and looked at the cost to an individual of the premiums and other medical costs the individual bears.

There is no evidence that the medical coverage is not comparable. There is no evidence that the amount of a VHAP premium and associated costs and the amount the petitioner will pay for the ESIA coverage are not comparable.¹ More importantly, the evidence does not support a finding that

¹Premium amounts are based on household size and income ranges.

OVHA's decision is arbitrary or unreasonable.

OVHA has correctly applied the regulations in requiring the petitioner to enroll for ESIA. As a result, OVHA's decision is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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